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EXAMINER				
NGUYEN, TAN D				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

09/839,697

Applicant(s)

LOWRANCE ET AL.

Examiner

Tan Dean D. Nguyen

Art Unit

3689

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20, 22-35, 37-39 and 41-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20, 22-35, 37-39 and 41-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/C.3)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 08/24/09 has been entered.

Response to Amendment

2. The amendment of 8/24/09 has been entered. Claims 1, 3-16, 18-19, 20, 22-35, 37-38, 39 and 40 are pending. Claims 2, 17, 21 and 36 have been canceled. They comprising 2 groups of claims:

- 1) method: 20, 22-35, and 37-38,
- 2) computer readable storage medium (CRSM): 39, and 41-56.

As of 8/24/09, method claim 20 is as followed:

20. (Currently Amended) A method for ~~facilitating decision-making by~~ accessing or generating an argument supporting a conclusion for a given situation, the method comprising:

a) using a processor to perform steps comprising:

(1) presenting to a user a plurality of searchable templates, ~~wherein each of the plurality of searchable templates includes a plurality of queries, and wherein~~

~~at least one~~ a subset of the plurality of searchable templates is relevant to the given situation;

(2) receiving from said user a selection of one of said plurality of searchable templates from ~~among the at least one of the plurality of searchable templates~~ said subset that is relevant to the given situation, said one of said plurality of searchable templates being a relevant template most related to the given situation and including a plurality of queries;

(3) displaying said plurality of queries to said user, wherein each of said plurality of queries has a categorical scale of likelihood regarding whether the given situation will likely have a negative or positive result, the categorical scale of likelihood being represented by a plurality of potential responses;

(4) presenting to the user at least one discovery tool that links to an external data source to facilitate responding to at least one of the plurality of queries;

(5) receiving from said user one or more user responses to ~~one or more~~ said plurality of queries ~~of the relevant template~~, where each of said one or more user responses ~~is associated with~~ is selected from the plurality of potential responses such that each of the user responses indicates a likelihood of a negative or positive result for an associated one of the ~~one or more~~ plurality of queries,

(6) receiving from said user supporting evidence in response to said ~~one or~~ mere plurality of queries, the supporting evidence being relied on by the user to form at least one of the one or more user responses;

(7) associating said supporting evidence received from said user with at least one of said plurality of queries for which a user response has been received;

(8) evaluating said one or more user responses, in accordance with the likelihood of a negative or positive result ~~associated with~~ indicated by each of said one or more user responses, ~~to determine~~ such that said one or more user responses collectively support a conclusion indicating whether the given situation will likely have a positive or negative result;

(9) forming an argument supporting the conclusion of the evaluating, the argument comprising the relevant template, the one or more user responses, the supporting evidence, and the conclusion; and

(10) publishing said argument, including said relevant template, said one or more user responses, said supporting evidence, and said conclusion, for review.

Finding of Facts

1) the term “argument” is defined as:

2 (a) a reason given in proof or rebuttal, (b) discourse intended to persuade,

3 (a) the act or process of arguing : ARGUMENTATION, (b) a coherent series of statements leading from a premise to a conclusion, (c) QUARREL, DISAGREEMENT.

See Merriam-webster Dictionary

Principles of Laws/Interpretations

3. The preamble is normally considered "being optional" and does not have much patentable weight since many times it is merely statements of purpose or intended use. See MPEP 2111.02 It's the body of the claim that matters and the current body of the claims have no tie to any particular machine. *Coming Glass Works*, 868 F.2d at 1257, 9 USPQ2d at 1966. If the body of a claim fully and intrinsically sets forth all of the limitations of the claimed invention, and the preamble merely states, for example, the purpose or intended use of the invention, rather than any distinct definition of any of the claimed invention's limitations, then the preamble is not considered a limitation and is of no significance to claim construction. *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165 (Fed. Cir. 1999). See also *Rowe v. Dror*, 112 F.3d 473, 478, 42 USPQ2d 1550, 1553 (Fed. Cir. 1997) ("where a patentee defines a structurally complete invention in the claim body and uses the preamble only to state a purpose or intended use for the invention, the preamble is not a claim limitation"); *Kropa v. Robie*, 187 F.2d at 152, 88 USPQ2d at 480-81 (preamble is not a limitation where claim is directed to a product and the preamble merely recites a property inherent in an old product defined by the remainder of the claim); *STX LLC. v. Brine*, 211 F.3d 588, 591, 54 USPQ2d 1347, 1350 (Fed. Cir. 2000) (holding that the preamble phrase "which provides improved playing and handling characteristics" in a claim drawn to a head for a lacrosse stick was not a claim limitation).
4. Note: In independent method claim 20, the phrase "...to perform steps comprising: (1)-(10), is not a positively recited method step but, rather, is mere intended

use of the used processor and thus having no patentable weight. See MPEP 2173.05 (q), 2106, and 2111.04, which indicate that a method claim requires active, positive steps. For example, "using a processor and performing the following steps", or "presenting to a user a plurality of searchable templates using a processor, ...". So basically, claim 20 only has one step, or (a) step.

Similarly, in claim 39, the phrase "to facilitate responding to ..." is intended use.

Note that in the claims, the term "can" or "could be modified" is considered as being "optional" or "capable" or "potential" or not necessarily needed limitation.

Note also that the "allow" clause: "to allow a client user to view" basically reads "permits/allows the user to do a task" and wherein the "task" is "modification of the information". In other word, "permitting/allowing an action" is different from actually "performing an action". "Allowing", "causing" or "permitting" only requires "serving as the reason" for an "action" though, not necessarily performing the action. This can be done by issuing commands or orders, or entering into contracts. So even though the entity may do something later with the equipment that is in the technological arts, the positively recited steps of merely "causing" can be done without operating the equipment and is not in the technological arts. Variations on this theme have been seen in other cases, using terms like "allowing" or "permitting" an action, e.g. "allowing a user to search a database". Again, these functions (elements or steps) are distinct from actually doing the action, e.g. "modifying the input data..." and the current claim language has no such function or structural element calling for "configured to modify" or "step/means for modifying".

As for the limitation "argument", "situation", etc., they are considered as non-functional descriptive material (NFD) on the data of "...", thus having no patentable weight. The mere insertion of "war" data over "data" does not "impart functionality when employed as a computer component", thus having no patentable weight.

See MPEP 2106.01 "Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works, and a compilation or mere arrangement of data.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 42, 44-45, 49-54, and 56 are rejected under 35 U.S.C. 101 because the claimed invention is directed to more than one class of statutory subject matter.

The independent claim 39 begin by discussing "computer readable storage medium" (article or product), but the body of the dependent claims contain language such as "server is configured to allow", which is language that is used in the claims of

an **apparatus**. "A claim of this type is precluded by the express language of 35 USC 101 which is drafted so as to set forth the statutory classes of invention in the alternative only". See Ex parte Lyell (17 USPQ2d 1548).

Claim Rejections - 35 USC § 112

1. **Claims** 42, 44-45, 49-54, and 56 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

1) **Claims** 42, 44-45, 49-54, and 56 are vague and indefinite since the dependent claims uses "apparatus structures" such as "is configured to", etc., in an article (method) claims. See *IPXL Holdings. Va. Amazon.com* (Fed. Circuit 2005). System claim that includes a method step is invalid as indefinite since it's not clear what is the scope of the apparatus claim. Vice versa, article claim that includes apparatus structure is invalid as indefinite since it's not clear what is the scope of the article or product claim.

2. **Claims** 39 and 41-56 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

1) In claim 39, it's not clear the relationship of the new step "presenting to the user at least one discovery tool that links..." to the rest of the steps of the claims or to the body of the claim. Also, it's considered as being incomplete for omitting essential functional cooperative relationships of steps, such omission amounting to a gap between the necessary functions/steps connections. See MPEP § 2172.01.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

8. Claims 20, 22-35 and 37-38 (method) are rejected under 35 U.S.C. 102(a) as being anticipated by GROSSER ET AL.

As for independent method claim 20, GROSSER ET AL discloses a method for accessing or generating an argument supporting a conclusion for a given situation, the method -comprising:

a) using a processor [to perform steps comprising: (1)...(10)].

{see Fig.1, 2 and 12, 15, abstract}.

Note that the terms inside the bracket [...] is considered as "intended use" and having no patentable weight as considered in the "Principles of laws/Interpretations" above.

As for dep. claims 22-35 and 37-38 (part of 20 above), which deal with the limitations of the steps (1)-(10) and therefore have no patentable weight.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. **Claims 39, and 41-56 (medium or CRSM) are rejected under 35 U.S.C. 103(a) as being unpatentable over GROSSER et al in view of KEGAN and/or HUANG et al (5,953,707).**

11. **As for medium claim 39**, GROSSER et al fairly discloses an analytical system and a CRSM for facilitating decision making by generating and accessing arguments, wherein each of the arguments supports an associated conclusion as to whether a given situation will likely have a negative or positive result, the analytical system comprising:

(1) one or more processors;

{see Fig. 1a, 3, 4 "Servers"}

(2) one or more memory coupled to the one or more processors, wherein at least one of the processors and memory are adapted to:

{see Fig. 1a, 3, 4 "Servers"}

a) present to a user a plurality of searchable displays/frame/forms (templates), wherein each of the plurality of searchable templates includes a plurality of questions (queries), and wherein at least one of the plurality of searchable templates is relevant to the given situation;

{see Figs. 1a, 2, 4, 6, 16c}

b) receive from said user a selection of one of said plurality of searchable templates from among the at least one of the plurality of searchable templates that is relevant to the given situation, said one of said plurality of searchable templates being a relevant template most related to the given situation;

(Figs. 1a, 6, 16e, 16f and 16i, cols. 5-6)

c) receive from the user one or more inputs/answers (responses) to one or more queries of the relevant template, where each of said one or more responses is associated with a likelihood of a negative or positive result for an associated one of the one or more queries and wherein one or more of the one or more queries has an associated discovery tool that links to an external data source to facilitate responding to the one or more of the one or more queries;

{see Figs. 1a, "Builder", "Lender", "Decorator", Fig. 2, Fig. 4 "Query", Fig. 3, element 301, "Databases", element "313", "Third Party Facts/Data/KB", Fig. 4, "element 310" Proposal Database", "Residual Database", Fig. 6 "user input", "choices", "facts", "requests", and col. 14, lines 56 to col. 60, for the teaching of using various external data sources or databases}

f) evaluate the one or more responses, in accordance with the likelihood of a negative or positive result associated with each of said one or more responses, {to determine a conclusion indicating whether the given situation will likely have a positive or negative result};

{Figs. 1a, 1b, 6, 16e, 16f and 16i, cols. 5-6}

g) generating/forming another set of information (argument) supporting a conclusion of the evaluating, the new argument comprising the one of the plurality of templates, the responses, and the conclusion; and

{see Figs. 1a, 1b, 6, 12, 13, 14, 16}}

h) publish the new argument, including the relevant template, one or more responses, the supporting evidence, and the conclusion, for review.

{see Figs. 1a, 1b, 6, 12, 13}.

GROSSER et al fairly teaches the claimed invention except for steps:

displaying a plurality of queries to the user wherein each has a categorical scale of likelihood;

receive from the user supporting evidence in response to the one or more queries, the supporting evidence being relied on by the user to form at least one of the one or more responses;

associate the supporting evidence received from said user with at least one of the one or more responses;

In another system/method for improving persuasive argumentation and decision making and particularly to a tool to estimate the strength of a persuasive argument, and to automatically assist in making persuasive arguments stronger, **KEGAN** discloses the steps of:

displaying a plurality of queries to the user wherein each has a categorical scale of likelihood;

receiving supporting evidence from said user in response to said one or more queries of the one of the plurality of templates, the supporting evidence being relied on by the user to form at least one of the responses; and

associating said supporting evidence received from said user with said answers responses to said one or more queries,

evaluating said responses {to determine whether the given situation will likely have a positive or negative result};

In order to achieve the scope/benefits cited above.

{see Figs. 2, "Evidence", "Fact", "Issue", "Law", "Matter", etc., icons, 5a and 5b, Fig. 14 "Fact Listing with Evidence, By GreenLight's Cudgel", Fig. 15 "Law with Facts, by GreenLight's Cudgel", and Fig. 25, abstract, col. 1, lines 20-27, Fig. 27 "elements 32, 37 and 40, cols. 8-10}.

It would have been obvious to modify the teachings of GROSSER et al by including elements/steps of (d), (e) and/or (f) above as taught by KEGAN for at least one of the benefit cited above which is for improving persuasive argumentation and decision making and particularly to a tool to estimate the strength of a persuasive argument, and to automatically assist in making persuasive arguments stronger.

Alternatively, in another system/method for facilitating a decision making (decision support system) in a business managing process, **HUANG et al** is cited to teach the analysis of the responses is associated with a likelihood of a negative or positive result for an associated one of the one or more queries and wherein one or more of the one or more queries has an associated discovery tool that links to an

external data source to facilitate responding to the one or more of the one or more queries, {see Figs. 1, 2, 12, 13, 14, 40, 60 and 69, col. 4, lines 45-60, col. 7, lines 10-15 "link ...", col. 11, lines 5-15, col. 12, lines 1-5, col. 97, lines 30-50, col. 98, lines 1-30 **"single/group usage. Ability for multiple users to collaborate in decision making"**, col. 99, lines 24-40}, thus allowing the various decisions makers (users) in the business system to view the decision making from their own perspective, obtain information and evaluate decisions concerning past, current and future performance with respect to a diverse set of often conflicting goals {see col. 1, lines 20-25, lines 50-67, and col. 2, lines 1-50}.

It would have been obvious to modify the teachings of GROSSER et al/KEGAN by including the analysis of the responses is associated with a likelihood of a negative or positive result for an associated one of the one or more queries and wherein one or more of the one or more queries has an associated discovery tool that links to an external data source to facilitate responding to the one or more of the one or more queries as taught by HUANG et al, {see Figs. 1, 2, 12, 13, 14, 40, 60 and 69, col. 4, lines 45-60, col. 7, lines 10-15 "link ...", col. 11, lines 5-15, col. 12, lines 1-5, col. 97, lines 30-50, col. 98, lines 1-30 **"single/group usage. Ability for multiple users to collaborate in decision making"**, col. 99, lines 24-40}, thus allowing the various decisions makers (users) in the business system to view the decision making from their own perspective, obtain information and evaluate decisions concerning past, current and future performance with respect to a diverse set of often conflicting goals {see col. 1, lines 20-25, lines 50-67, and col. 2, lines 1-50}.

As for dep. claim 41 (part of 39 above), which deal with feature of the one or more queries, is formed in a hierarchical structure, this carries no patentable weight because it's product of a process and appears to be taught in Figs. 1c and 1b of GROSSER et al.

"[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted) (Claim was directed to a novolac color developer. The process of making the developer was allowed. The difference between the inventive process and the prior art was the addition of metal oxide and carboxylic acid as separate ingredients instead of adding the more expensive pre-reacted metal carboxylate. The product-by-process claim was rejected because the end product, in both the prior art and the allowed process, ends up containing metal carboxylate. The fact that the metal carboxylate is not directly added, but is instead produced in-situ does not change the end product.).

The structure implied by the process steps should be considered when assessing the patentability of product-by-process claims over the prior art, especially where the product can only be defined by the process steps by which the product is made, or where the manufacturing process steps would be expected to impart distinctive structural characteristics to the final product. See, e.g., *In re Garnero*, 412 F.2d 276, 279, 162 USPQ 221, 223 (CCPA 1979) (holding "interbonded by interfusion" to limit structure of the claimed composite and noting that terms such as "welded," "intermixed," "ground in place," "press fitted," and "etched" are capable of construction as structural limitations.)<

As for dep. claims 42, 44-45 (part of 39 above), which deal with features or structures of the argument servers, these carry no patentable weight in a CRSM claim format. Furthermore, these are inherently included in the teachings of GROSSER et al./KEGAN as shown in Fig. 1a or 1b of GROSSER et al.

As for dep. claim 43 (part of 39 above), which deal with the source of the input, this is taught in KEGAN Figs. 4, 14 and 15. Furthermore, the term "is received" is

interpreted as “capable of receiving”, since it’s not positively recited, and the input of KEGAN is capable of having this feature.

As for dep. claims 46-48 (part of 39 above), which deal with features of the queries, these are taught in col. 1, lines 20-27, Fig. 27 “elements 32, 37 and 40, cols. 8-10}.

As for dep. claims 49-54 and 56 (part of 39 above), which deal with features or structures of the argument servers, these carry no patentable weight in a CRSM claim format. Furthermore, these are inherently included in the teachings of GROSSER et al /KEGAN as shown in Fig. 1a or 1b of GROSSER et al.

As for dep. claim 55 (part of 39 above), which deal with the feature of the template, this is taught in GROSSER et al Figs. 1a, 2, 4, 6 and 16c. Furthermore, the term “is associated with” is interpreted as “capable of associating”, since it’s not positively recited, and the template of GROSSER et al is capable of having this feature.

Response to Arguments

12. Applicant’s arguments of August 24, 2009, with respect to claims 1, 3-16, 18-20, 22-35, 37-40 have been considered but are moot in view of the new ground(s) of rejection which are caused by applicant’s amendment.

No claims are allowed.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through private PAIR only. For more information about the PAIR system, see <http://pair-direct@uspto.gov>. Should you have any questions on access to the private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

1. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866.217.9197** (toll-free).

2. Any response to this action should be mailed to:

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Washington, D.C. 20231

or faxed to **571-273-8300**.

Hand delivered responses should be brought to the

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3. In receiving an Office Action, it becomes apparent that certain documents are missing, e. g. copies of references, Forms PTO 1449, PTO-892, etc., requests for copies should be directed to Tech Center 3600 Customer Service at (571) 272-3600, or e-mail CustomerService3600@uspto.gov.

4. Any inquiry concerning the merits of the examination of the application should be directed to Dean Tan Nguyen at telephone number (571) 272-6806. My work schedule is normally Monday through Friday from 6:30 am - 4:00 pm. I am scheduled to be off every other Friday. Should I be unavailable during my normal working hours, my supervisor Janice Mooneyham can be reached at (571) 272-6805. The main FAX phone numbers for formal communications concerning this application are (571) 273-8300. My personal Fax is (571) 273-6806. Informal communications may be made, following a telephone call to the examiner, by an informal FAX number to be given.

/Tan Dean D. Nguyen/
Primary Examiner, Art Unit 3689